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The State of New Hampshire

Copy in opinion

Attorney General

Concord

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Mr. Thomas E. Thompson
Division of Welfare
8 Loudon Road
Concord, New Hampshire 03301

Dear Mr. Thompson:

You have asked for the advice of this office in dealing with two problems which have arisen in the application of RSA 166:8 (supp), affecting the settlement of certain persons, which was enacted as 1975 Laws 221, effective August 2, 1975. A person who is "poor and unable to support himself," whose support is not the responsibility of any relative, shall be supported by the town or city in which he has a "settlement" (RSA 165:20 (supp)); if he has no settlement, he shall be supported by the county in which he resides (RSA 166:10 (supp)). Under the basic rule providing for the acquisition of a settlement, one gains a settlement by residing in a town or city for one year while receiving no assistance as a pauper. RSA 164-A:1, I and 4 (supp); RSA 21:5. To conclude that one has acquired a settlement, then, is simply to conclude that one has resided in a city or town self-sufficiently for a year with the result that the municipality must support him if in the future he becomes poor and unable to support himself. The law dealing with settlement thus determines whether a county or municipality must support a given pauper, as in the latter case it determines which municipality is liable for the support.

A settlement "is lost upon the abandonment for one year of the residence by which the settlement was gained" (RSA 164-A:2 (supp)), or by a person "who has been assisted as a pauper continuously for one year" (RSA 164-A:5 (supp)). The general rule that one loses a settlement after receiving assistance continuously for one year was subject prior to August 2, 1975 to the express provisions of RSA 167:1 (most recently amended by 1970 Laws 34:14, but repealed by 1975 Laws 221:2) that

> [n]o person shall lose or be prevented from gaining a settlement because of receiving old age assistance, aid to the needy blind,

> aid to families with dependent children,
> aid to the permanently and totally disabled,
> or medical assistance under the provisions
> of this chapter or RSA 161.

Hence, persons receiving old age assistance and the other forms of aid mentioned above, and defined in RSA 167:6 (supp), did not for that reason lose settlements after a year of receiving such aid, and responsibility for paying the portion of such aid not paid by the state or national governments remained with the municipalities in which any of the aid recipients had settlements, rather than shifting to the counties in which the aid recipients resided.

We stated above that recipients of aid specified in RSA 167:1 (repealed) did not "for that reason" lose settlements. Some recipients of such aid lost settlements for a different reason. You have advised us that if the recipient of such aid moved to an institution outside the town or city of his settlement he was treated as having abandoned his residence, within the meaning of RSA 164-A:2 (supp), such that after a year of such abandonment he was treated as having lost his settlement. Apparently such persons were not treated as residing in the town where the institution was located so as to acquire a new settlement there, under RSA 164-A:1, I (supp). The result was that persons receiving aid described under RSA 167:1 (repealed) who moved into institutions located in their own towns retained their settlements, and their towns remained obligated to contribute to their support; but such persons who moved into institutions in towns other than those of their settlements lost their settlements after a year of continuously so living, thus obligating the counties of their residence to contribute thereafter.

Judging from the title of section one of 1975 H.B. 575, which was passed as 1975 Laws 221, it was the disparate treatment of settlements of recipients of RSA 167:1 (repealed) aid, depending on whether their institutional address was in the same town as their settlement or a different one, that prompted passage of that statute. That section of the bill as enacted was entitled "A Resident of Town in which Home or Institution is Located Loses Settlement After One Year." (See 1A Sutherland, Statutes and Statutory Construction, §22.29 [C. Sands 4th Ed. 1972].) To accomplish this object the statute as passed changed the state of the law in two respects. First, it enacted RSA 166:8 (supp):

> 166:8 Inmates of Homes and Institutions.
>
> I. Any person who is or becomes a public charge while at any child caring agency, hospital, home for the aged, nursing home,

> rest home, convalescent home, shared home for adults, or similar institution is chargeable for support to the county in which he last resided before entering such institution, unless such person has a settlement in some town or city at the time he entered the institution.
>
> II. Any person who has a settlement in a town or city, including a town or city in which such institution is located, at the time of entering an institution specified in paragraph I, shall lose said settlement in accordance with RSA 164-A:5, and the county in which he last resided shall thereafter be chargeable for the support.

Second, it repealed RSA 167:1, which had provided that receipt of old age assistance, aid to the permanently and totally disabled (hereinafter "O.A.A." and "A.P.T.D.", respectively), and the other forms of aid listed would not result in loss of settlement.

So far as we are aware, it has been assumed by all concerned parties that under RSA 166:8 (supp) an inmate of one of the institutions listed in subsection I who receives O.A.A. or A.P.T.D. continuously for one year will lose his settlement, wherever the institution is located, so that thereafter the county where he resided before entering the institution will be obligated to reimburse the State for a portion of money paid for his support. We believe this assumption is correct. Although RSA 164-A:5 (supp), and its predecessor sections, providing for loss of settlement as a result of a year's assistance "as a pauper" had never applied to persons receiving O.A.A. and A.P.T.D., the stated object of what became RSA 166:8 (supp) would be defeated unless the statute is held to have the effect of including institutionalized O.A.A. and A.P.T.D. recipients among persons who have been assisted as paupers within the meaning of RSA 164-A:5 (supp).

It would have been simpler to provide for this in plain language, but this interpretation is confirmed by two reasons. The first is the title of the first section of H.B. 575, quoted above, that a resident of the town in which the institution is located would lose his settlement. The significance of this objective was empahsized by an amendment to the original bill which made it explicit that those who would lose settlements include those with settlements in "a town or city in which such institution is located." 1975 H.J. 597; RSA 166:8, II (supp).

The statute was unnecessary to accomplish this result except as to O.A.A. and A.P.T.D. recipients, so if the statute is to be given effect it must be given effect as to them. The second reason is that the "Analysis" of the bill, repeated in the report to the House by the Committee on Health and Welfare, 1975 H.J. 597, contained the statement that the bill would repeal RSA 167:1 "since this section would be inconsistent with the settlement status of inmates of homes and institutions." It would not have been inconsistent unless institutionalized O.A.A. or A.P.T.D. recipients must be regarded as persons assisted as paupers within the meaning of RSA 164-A:5 (supp).

You have asked our advice on calculating the one-year period of continuous receipt of assistance which will result in loss of settlement by institutionalized O.A.A. and A.P.T.D. recipients under RSA 164-A:5 (supp). The statute applying the loss of settlement provisions to them, RSA 166:8 (supp) became effective on August 3, 1975. With respect to persons who were both O.A.A. or A.P.T.D. recipients prior to August 3, 1975 and also inmates of institutions in their own towns or cities prior to that time, the question has arisen whether the one-year period governing loss of settlement can be calculated as starting prior to the effective date of the statute. Your own administrative interpretation has answered the question negatively. We agree: the one-year period could not have commenced to run prior to August 3, 1975, and the earliest losses of settlements on account of RSA 166:8 (supp) could not have occurred prior to August 2, 1976. There are several reasons for this conclusion. Perhaps the most obvious is that 1975 Laws 221 contains no provision that the one-year period be calculated from a time prior to the effective date of the new statute applying RSA 164-A:5 (supp) to O.A.A. and A.P.T.D. recipients in institutions. This is significant when one realizes that in the past the Legislature has on occasion provided for the computation of time from a date preceding a governing statute's effective date. For example, when the present statute providing for gaining a settlement after a year's residence was passed, the enacting session law contained a section entitled "Temporary Provisions": "Settlement within the meaning of RSA 164-A:1 shall be determined by the residence of a person since January 1, 1967." 1967 Laws 192:8. The session law in question was approved on June 13, 1967 and was effective on January 1, 1968.

A second reason rests upon the function of the new statute in placing a financial burden on counties that they had not borne before. Leaving aside possible constitutional problems if the statute were held to apply retrospectively, it is a general rule of construction that a statute creating or adding to an obligation applies only prospectively. Mihoy v. Proulx, 113 N.H. 698 (1973). Express provisions or unmistakable evidence would be

required to establish a legislative intent to apply such a statute retrospectively. There are no such provisions, the Journals of the House and Senate contain no such evidence, and the county budgets for the years in question contain no such indications. Hence, we conclude that the one year time period with respect to the affected aid recipients could not begin to run prior to the effective date of the statute designed to shift the burden of support.

You have also asked us to advise you whether the repeal of RSA 167:1 by 1975 Laws 221:2 has the legal effect of terminating after one year the settlement of all O.A.A. or A.P.T.D. recipients, or only of those in the institutions listed in RSA 166:8, I (supp). RSA 167:1 (repealed) provided that receipt of O.A.A., A.P.T.D. and certain other forms of aid would not result in loss of settlement under the rule of RSA 164-A:5 (supp) that receipt of assistance as a pauper continuously for one year would result in loss of settlement. Earlier in this opinion we concluded that as to the institutionalized O.A.A. and A.P.T.D. recipients the provisions of RSA 164-A:5 (supp) would apply. You point out that a significant number of O.A.A. and A.P.T.D. recipients are not institutionalized. If their settlements will terminate, the welfare burden to be shifted to the counties will obviously be the heavier. Our advice is that the repeal of RSA 167:1 does not result in the termination of settlements of O.A.A. and A.P.T.D. recipients who are not inmates of institutions described in RSA 166:8, I (supp).

In arriving at this conclusion, resort to statutory history is necessary. RSA 164-A:5 (supp) providing for loss of settlement after continuous assistance as a pauper for one year took its present form by enactment of 1933 Laws 142:3, though the period specified was then five years, as it was through 1967. RSA 167:1 (repealed) first took form when enacted with reference solely to O.A.A. by 1937 Laws 202:8, providing that no one would lose a settlement because of receiving O.A.A. Later statutes added other forms of aid to the favored category thus created, including A.P.T.D. by 1951 Laws 90:2. One may say, then, either that the later statutes governing the settlement of O.A.A. and A.P.T.D. recipients repealed or amended by implication the earlier statute providing for loss of settlement after receipt of assistance, or that the statutes governing O.A.A. and A.P.T.D. placed these forms of aid in special categories so that disbursement of such aid did not constitute assistance of a pauper so as to terminate settlement after the required period. The distinction deserves to be called metaphysical, and the legal consequences do not differ depending on which analysis one prefers. On either alternative receipt of O.A.A. or A.P.T.D. was not governed by the statute that finally became RSA 164-A:5 (supp) providing for loss of settlement.

1975 Laws 221 did not expressly amend RSA 164-A:5 (supp) so as to extend its loss of settlement provisions of O.A.A. and A.P.T.D. recipients. So if we assume that this statute had been impliedly partially repealed as to O.A.A. and A.P.T.D., it would have to have been specifically reenacted after or contemporaneously with the repeal, in turn, of its partial implied repealer (i.e., RSA 167:1) for it to apply to all O.A.A. or A.P.T.D. recipients. Corson v. Thomson, ____ N.H. ____ (1976). This, of course, was not done. If, in the alternative, we assume O.A.A. and A.P.T.D. were always placed in special definitional categories so that RSA 164-A:5 (supp) never by its terms extended to them, then RSA 164-A:5 (supp) never has been extended to them unless by implication. Appropriate rules of statutory construction for judging this issue are the rules that an amendatory act does not change the original statute more than is expressly declared or necessarily implied (1A Sutherland, Op. Cit. §22.30) and that amendment by implication is not favored (Ibid. §22.13).

Following these principles, the repeal of RSA 167:1 by 1975 Laws 221:2 does not expressly declare or necessarily imply an expansion of the scope of RSA 164-A:5 (supp). 1975 Laws 221:1 speaks only of support for inmates of certain institutions and of applying RSA 164-A:5 (supp) to those inmates; it does not speak of any aid for recipients outside institutions and it implies nothing about them. If RSA 164-A:5 (supp) is to be applied to terminate the settlements of O.A.A. or A.P.T.D. recipients outside institutions, that statute must be amended in the future to do so. Nothing in the legislative history of 1975 Laws 221 suggests any different conclusion: the original bill, its "Analysis" and the journals of the two houses are devoid of any suggestion that O.A.A. or A.P.T.D. recipients outside of institutions were considered in any way. The law relating to their settlements remains what it was prior to the enactment of 1975 Laws 221.

Yours sincerely,

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Attorney General

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